

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

IRVINE UNIFIED SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2010090067

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On October 26, 2010, the Irvine Unified School District (District) filed a motion to amend the due process hearing request (complaint) that it had filed on August 30, 2010. The Office of Administrative Hearings (OAH) granted the District's motion on October 28, 2010. On November 5, 2010, Student filed a timely notice of insufficiency (NOI) as to the second issue and proposed resolution of that issue in the District's amended complaint. As discussed below, the District's second issue and its proposed resolution are sufficiently pled.

APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint.¹ The party filing the complaint is not entitled to a hearing unless the complaint meets the requirements of Title 20 United States Code section 1415(b)(7)(A).

A complaint is sufficient if it contains: (1) a description of the nature of the problem of the child relating to the proposed initiation or change concerning the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education (FAPE) to the child; (2) facts relating to the problem; and (3) a proposed resolution of the problem to the extent known and available to the party at the time.² These requirements prevent vague and confusing complaints, and promote fairness by providing the named parties with sufficient information to know how to prepare for the hearing and how to participate in resolution sessions and mediation.³

¹ 20 U.S.C. § 1415(b) & (c).

² 20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).

³ See, H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.

The complaint provides enough information when it provides “an awareness and understanding of the issues forming the basis of the complaint.”⁴ The pleading requirements should be liberally construed in light of the broad remedial purposes of the IDEA and the relative informality of the due process hearings it authorizes.⁵ Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.⁶

DISCUSSION

The facts alleged in issue two of the District’s amended complaint are sufficient to put Student on notice of the issues forming the basis of the complaint. Issue two asks OAH to determine if the District’s offer to provide Student with a back-up nurse at school, on days in which Student’s private nurse cannot accompany him, provides Student with a free appropriate public education (FAPE). In the background facts supporting the issue, the District asserts that it agreed to provide Student with a school nurse if Student clarified what the nurse was supposed to do and if Student permitted the District to access medical information and discuss Student’s needs with his treating physicians so that the District could provide the necessary back-up nursing care.

Student contends that issue two is insufficiently pled because the background facts of the complaint fail to state what type of information Student’s family refused to provide and fails to state what type of form or the content of the authorization for release of information which the District wanted Student’s parents to sign. Student also contends that his parents have not been provided with a form for release of information and that without seeing the actual release form, his parents cannot know to what information the District believes it is entitled. Student maintains that there is thus no nexus between the background facts of issue two of the District’s complaint and issue two as pled. Student thus contends that there is insufficient notice in the complaint to allow him to defend against issue two.

⁴ Sen. Rep. No. 108-185, *supra*, at p. 34.

⁵ *Alexandra R. v. Brookline School Dist.* (D.N.H., Sept. 10, 2009, No. 06-cv-0215-JL) 2009 WL 2957991 at p.3 [nonpub. opn.]; *Escambia County Board of Educ. v. Benton* (S.D.Ala. 2005) 406 F. Supp.2d 1248, 1259-1260; *Sammons v. Polk County School Bd.* (M.D. Fla., Oct. 28, 2005, No. 8:04CV2657T24EAJ) 2005 WL 2850076 at p. 3[nonpub. opn.] ; but cf. *M.S.-G. v. Lenape Regional High School Dist.* (3d Cir. 2009) 306 Fed.Appx. 772, at p. 3[nonpub. opn.].

⁶ Assistance to States for the Education of Children With Disabilities and Preschool Grants for Children With Disabilities, 71 Fed.Reg. 46540-46541, 46699 (Aug. 14, 2006).

Student, however, conflates the sufficiency requirements of Title 20 United States Code section 1415(b)(7)(A) with any affirmative defenses he may have to the issue presented. The issue as articulated by the District is fairly straightforward: did the District offer to provide the back-up nurse, and, if so, does the offer provide Student with a FAPE? The issue is clear, there are background facts provided in the complaint, and the District provides a proposed resolution. Although Student asserts that the District never provided him or his parents with a description of the information the District needed in order to provide a back-up nurse, the District's issue two does not address the District's attempt to obtain information or authorization to obtain information from Student. The issue merely asks whether the District's offer to provide the nurse constituted a FAPE for Student. The issues raised by Student in his NOI basically address whether the District's offer was clear and whether it was unconditional, and, if not, whether the offer therefore failed to provide FAPE. Those issues are affirmative defenses which do not address whether an issue as pled is sufficient. Here, as pled, the District's issue two is sufficient.

The District's proposed resolution for issue two seeks an order from OAH that its conditional offer of nursing services is appropriate and that the District be permitted to implement the nursing services in conjunction with a full release of information from Student's physician. Student challenges the proposed resolution for issue two on the grounds that the resolution does not state with particularity the parameters of the release of information the District seeks.

A complaint is required to include proposed resolutions to the problem, to the extent known and available to the party at the time. (20 U.S.C. §1415(b)(7)(A)(ii)(IV).) However, unlike the requirement that the issues of a complaint be stated with enough sufficiency for a responding party to be able to defend against the allegations, there is no such requirement for the proposed resolutions. Student cites no authority for his argument that the District's proposed resolution must be found insufficient because it is not stated with particularity or specificity. Again, Student's arguments are affirmative defenses to what the District requests as a remedy rather than a basis for finding the proposed resolution insufficient.

Moreover, the proposed resolution as stated is fairly specific. As such, even if the District was required to state a resolution with specificity or particularity, the resolution as stated is sufficiently pled. Whether the resolution is appropriate or whether the District is entitled to the resolution it requests is beyond the scope of an NOI.

ORDER

1. The complaint is sufficient under Title 20 United States Code section 1415(b)(7)(A)(ii).

2. The prehearing conference and hearing dates in this matter are confirmed.

Dated: November 8, 2010

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings